United Nations CCPR/C/110/D/1894/2009

# International Covenant on Civil and Political Rights

Distr.: General
29 April 2014

Original: English

**Human Rights Committee**

## Communication No. 1894/2009

### Decision adopted by the Committee at its 110th session (10–28 March 2014)

| | |
|---|---|
| *Submitted by:* | G.J. (not represented by counsel) |
| *Alleged victim:* | The author |
| *State party:* | Lithuania |
| *Date of communication:* | 26 November 2007 (initial submission) |
| *Document references:* | Special Rapporteur's rule 97 decision, transmitted to the State party on 18 August 2009 (not issued in a document form) |
| *Date of adoption of decision:* | 25 March 2014 |
| *Subject matter:* | inhuman treatment; lawfulness of detention; adequate time and facilities to prepare defence and communicate with counsel; right to examine witness; right not to self-incriminate |
| *Substantive issues:* | inhuman treatment; unlawful detention; habeas corpus; fair trial guarantees |
| *Procedural issues:* | incompatibility with the provisions of the Covenant; substantiation of claims; exhaustion of domestic remedies |
| *Articles of the Covenant:* | 7; 9, paras. 1 and 4; 10, para. 1; and 14, para. 3 (b), (d), (e) and (g) |
| *Articles of the Optional Protocol:* | 2 and 3 |

GE.14-42908

*1442908*

Please recycle

# Annex

## Decision of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights (110th session)

concerning

### Communication No. 1894/2009*

| | |
|---|---|
| *Submitted by:* | G.J. (not represented by counsel) |
| *Alleged victim:* | The author |
| *State party:* | Lithuania |
| *Date of communication:* | 26 November 2007 (initial submission) |

*The Human Rights Committee*, established under article 28 of the International Covenant on Civil and Political Rights,

*Meeting* on 25 March 2014,

*Adopts* the following:

### Decision on admissibility

1. The author is G.J., a Lithuanian national born in 1950. He claims to be a victim of violations by Lithuania of his rights under articles 7; 9, paragraphs 1 and 4; 10, paragraph 1; and 14, paragraph 3 (b), (d), (e) and (g), of the International Covenant on Civil and Political Rights. He is not represented by counsel. The Optional Protocol entered into force for Lithuania on 20 February 1992.

#### The facts as submitted by the author

2.1 On 18 May 2005, the author, as part of an organized group, was arrested in connection with extortion and murder of one Mr. G.S. in 1993, pursuant to article 24, paragraph 4; article 25, paragraph 3; article 129, paragraph 2, subparagraph 9; and article 181, paragraph 3, of the Criminal Code of Lithuania.

2.2 On 19 May 2005, the Vilnius Second District Court placed him in custody for three months. The author informed the court that in March 2003, he had been diagnosed with incurable hepatitis C, and since January 2005, he had been participating in a clinical trial of a new drug for the disease, which was supposed to end in December 2005.

* The following members of the Committee participated in the examination of the present communication: Mr. Yadh Ben Achour, Mr. Lazhari Bouzid, Ms. Christine Chanet, Mr. Ahmad Amin Fathalla, Mr. Cornelis Flinterman, Mr. Yuji Iwasawa, Mr. Walter Kälin, Ms. Zonke Zanele Majodina, Mr. Gerald L. Neuman, Sir Nigel Rodley, Mr. Victor Manuel Rodríguez-Rescia, Mr. Fabian Omar Salvioli, Ms. Anja Seibert-Fohr, Mr. Yuval Shany, Ms. Margo Waterval and Mr. Andrei Paul Zlatescu.

2.3 On 27 May 2005, his lawyer appealed the district court's decision to the Vilnius Regional Court. The appeal was rejected on 3 June 2005, as, inter alia, the Penitentiary Hospital had ensured that the author could continue the treatment in custody.

2.4 On 13 June 2005, the author requested the Prosecutor's Office to place him under house arrest in order to continue his treatment. His request was dismissed on 1 July 2005 by the prosecutor (name provided) of the Department of Investigation of Organized Crime and Corruption (hereinafter "the prosecutor"). On an unspecified date, he lodged an appeal against this decision, which was again dismissed on 20 July 2005. On 31 July 2005, he appealed both decisions to a pretrial investigation judge of the Vilnius Second District Court. Those appeals were rejected on 2 and 8 August 2005. The author appealed the investigation judge's decisions to the President of Vilnius Second District Court. On 22 August 2005, that appeal was rejected on procedural grounds.

2.5 On 18 July 2005, the author's lawyer requested the prosecutor to alter the author's custody, claiming that ceasing to take the experimental drug would pose a threat to the author's life. The request was dismissed on 29 July 2005 by the prosecutor. The author notes that his request was based on article 8, paragraph 3, of the Law on Pretrial Detention, which forbids scientific and medical tests to be performed on a detainee even with his or her consent. However, the prosecutor indicated that that provision did not apply when such actions were carried out at the detainee's initiative.

2.6 On 1 August 2005, the author was accused of having committed a number of serious and other crimes.

2.7 On 3 August 2005, his lawyer appealed the prosecutor's decision of 29 July 2005 to the Vilnius Second District Court, requesting that the restraint measure be altered. That appeal was dismissed on 8 August 2005.

2.8 On 16 August 2005, the Vilnius Second District Court extended the author's custody for another three months. On the same date, the author's lawyer again appealed the prosecutor's decision of 29 July 2005, and the Vilnius Second District Court's decision of 8 August 2005. On 22 August 2005, the acting President of the Vilnius Second District Court dismissed the appeal, noting, inter alia, that the pretrial judge's decision was final and not subject to appeal.

2.9 On 29 July 2005, the author's wife wrote to the Ministry of Health regarding the author's participation in the experimental drug programme while being in detention. The Ministry of Health instructed the Bioethics Committee to review the complaint.

2.10 The author stopped receiving the experimental medication on 16 August 2005.

2.11 In August 2005, after the author's treatment had been terminated, the author's wife appealed to different authorities to have the author provided with the necessary treatment. On 2 September 2005, the Ministry of Health replied that the author's participation in the clinical trial had been terminated as breaching article 8 of the Law on Pretrial Detention, and article 5, paragraph 2, of the Law on Ethics of Biomedical Research. The Ministry stated that remand in custody was an insuperable obstacle to continuing the clinical tests, and that the author would be prescribed a standard treatment. The Parliament's Committee on Health Affairs stated on 11 October 2005 that it was not authorized to decide on the participation of specific individuals in biochemical research.

2.12 When the author's participation in the experiment was discontinued, the author's lawyer complained to the Vilnius First District Court, requesting that the Vilnius University Santariskes Hospital administration reinstate the author's participation in the clinical trial and that it take temporary precautionary measures, i.e., continuing the experimental treatment, pending a decision on the merits of the case. On 18 August 2005, the district court held that the content of the appeal did not meet the requirements of article 111 of the

Code of Civil Procedure and ordered that the shortcomings be rectified by 7 September 2005.

2.13 On 30 August 2005, the author appealed the district court's decision of 18 August 2005 and requested the President of the Vilnius First District Court to refrain from stopping the experimental treatment, as 7 September 2005 would be too late to resume the treatment. That appeal was returned without examination as the author was released on 9 September 2005.

2.14 On 9 September 2005, the Vilnius Regional Court ordered the release of the author on bail and asked him to sign a statement that he would not leave the country. The author notes that the factual circumstances had not changed since his arrest, except that his health had deteriorated considerably in custody. On the same date, he was admitted to Klaipeda Regional Hospital.

2.15 On 3 and 10 January 2006, the author requested the Prosecutor's Office to impose disciplinary punishment on the prosecutor in question.[1] His request was forwarded to a pretrial investigation judge of the Vilnius Second District Court, who, on 30 January 2006, held that the author's custody was imposed by a court; that the author was given every opportunity to be treated with the experimental drugs while in detention; and that his treatment was stopped, not by the investigation or a prosecutor, but at the request of the author and his wife.

2.16 On 3 June 2005, he was admitted to the Penitentiary Hospital as he was at risk of a heart attack. A police officer tried to interrogate him but he lost consciousness. On 6 June 2005, he complained to the Prosecutor General about investigative actions being performed during his hospitalization, in the absence of his lawyer. On 20 July 2005, the prosecutor found his complaint unjustified.

2.17 The author and his wife then complained about the unlawful actions of the investigation to the President of the Human Rights League, the Human Rights Committee of the Parliament and the Lithuanian Institute for Monitoring Human Rights, but to no avail.

2.18 On 28 February 2006, the author complained to the Prosecutor's Office, reiterating his claims of 6 and 13 June 2005. On 26 May 2006, the same prosecutor warned him and his wife that during the pretrial investigation they had submitted more than 100 repetitive claims to different institutions. According to the prosecutor, by doing that, the complainants had abused their right to appeal procedural actions and decisions and, had thereby interfered with the investigation.

2.19 On 1 September 2006, the Deputy Prosecutor General notified the author that during the pretrial investigation, he and his lawyer had filed more than 150 complaints. He stated that that unreasonably large number of repeated requests and demands had adversely affected the effectiveness and thoroughness of the investigation of the case, thereby violating the principle of a speedy trial under the Code of Criminal Procedure.

2.20 On 15 September 2006, the author complained to the Vilnius Second District Court, listing the unlawful actions of the prosecutor in question, including the actions that resulted in the deterioration of his health condition and the termination of the experimental treatment. On 27 September 2006, a pretrial investigation declared the request groundless. On an unspecified date, the author appealed that decision to the President of the Vilnius Second District Court, but to no avail. His subsequent similar complaints were dismissed.

[1] See paragraph 2.4 supra.

2.21 The author further elaborates at great lengths on the recommendations of 5 July 2007 of the Medical Panel of the Centre for Hepatology, Gastroenterology and Dietetics of Vilnius University Santariskes Hospital regarding the positive effects of the treatment with the experimental drug.

2.22 On 18 March 2008, while hospitalized in Klaipeda Hospital and contrary to the medical doctor's prohibition to conduct investigative actions with him, the author received notification that he was a suspect and was also questioned in hospital.

**The complaint**

3.1 The author claims a violation of his rights under articles 7 and 10, paragraph 1, of the International Covenant on Civil and Political Rights, stating that the discontinuation of his participation in the clinical experiment had negatively affected his health. The fact that he was interrogated while in hospital in a helpless state amounted to a breach of his rights under article 10, paragraph 1, of the Covenant.

3.2 The author claims a violation of article 9, paragraphs 1 and 4, of the Covenant, stating that he needed to participate in the clinical experiment, but was unlawfully placed in custody on 19 May 2005, and the authorities refused to impose a less restrictive restraint measure.

3.3 The author also claims a violation of his rights under articles 10 and 14, paragraph 3 (d) and (g), of the Covenant, stating that he was interrogated while hospitalized in a helpless state and in the absence of his lawyer, so that he was compelled to testify against himself. In the latter regard, the author also states that on a number of occasions, offers were made that if he confessed his guilt, in return he would be released from detention on remand and be able to continue his treatment.

3.4 The author further claims a violation of his rights under article 14, paragraph 3 (b) and (g), of the Covenant, stating that, on 18 March 2008, while in hospital and contrary to his medical doctor's prohibition that investigative actions be conducted, he was officially notified that he had been declared a suspect of crimes, and he was questioned by investigators.

3.5 On 15 March 2010, the author claimed additional violations of his rights under article 14, paragraph 3 (b) and (e), of the Covenant, stating that he did not have enough time to prepare his defence as he was unable to acquaint himself with the pretrial investigation materials and to supplement them; that he could not freely communicate with his lawyer while in custody; and that the restraint measure was replaced with the prohibition to leave the city of Palanga. On 11 September 2010, referring to article 14, paragraph 3 (e), of the Covenant, the author added that he was denied the opportunity to question particular witnesses.

**State party's observations on admissibility and merits**

4.1 On 13 November 2009, the State party challenged the admissibility of the communication. It notes that on 1 December 2004, prior to his detention in 2005, the author, of his own free will, decided to participate in the clinical experiment, and that he decided to stop it on 16 August 2005, claiming that as a detainee, he could not continue his participation. Between 19 May 2005 and 16 August 2005, the authorities guaranteed his participation in the experiment, and three times a week, he was taken to the health care institution conducting the research.

4.2 The experimental research was introduced to verify whether a particular drug was effective and safe for persons suffering from slow-progressing hepatitis C.

4.3 On 1 December 2004, the Centre for Hepatology, Gastroenterology and Dietetics of the Vilnius University Hospital (hereinafter "the Centre") invited the author to participate in the said research and he agreed. In this connection, the State party notes that the effectiveness of the drug was controlled by the application of a substance with no medical effect (a placebo) to a number of participants. Neither the patient nor the treating doctor knew whether it was the drug or the placebo that was being injected. Under his agreement with the Centre, the author could terminate participation at any moment.

4.4 On 19 May 2005, the Vilnius Second District Court placed the author into custody for three months. However, his participation in the experiment was ensured while in detention. On 18 July 2005, one of his lawyers requested the prosecutor to impose a less restrictive restraint measure, invoking article 8 of the Law on Pretrial Detention which prohibited detainees from involvement in scientific or medical experiments. On 29 July 2005, the prosecutor explained that article 8 of the Law was unreasonably interpreted as the author had started the experiment before his detention, and the authorities were only ensuring his continued participation while in custody.

4.5 The State party adds that the author's wife had addressed various State institutions concerning his participation in the research while in detention. Moreover, on 1 August 2005, she published an open letter to the Minister of Health in the biggest daily newspaper, *Lietuvos Rytas*. In this context, on 11 August 2005, the organizer of the research decided that the author should be excluded from the research. According to the State party, the author used his participation in the experiment to have his restraint measure altered. In addition, the allegations that his discontinued participation in the research had fatal consequences to his health were unfounded.

4.6 In this connection, the State party considers that the author's claims do not fall within the scope of articles 7 and 10 of the International Covenant on Civil and Political Rights. Article 7 of the Covenant protects the individual from being subjected without his or her free consent to medical or scientific experiments, but not from the discontinuation of medical or scientific experiments. Accordingly, this part of the communication is inadmissible under article 3 of the Optional Protocol.

4.7 Alternatively, the State party considers that the author has failed to substantiate his allegations or that any harm or suffering was of such a level as to constitute a violation of the mentioned articles of the Covenant. Therefore, the author's allegations under article 7 and 10 of the Covenant are unsubstantiated and thus inadmissible under article 2 of the Optional Protocol.

4.8 The State party adds that, in any event, the author has failed to exhaust available domestic remedies as required under article 5, paragraph 2 (b), of the Optional Protocol. In particular, a patient's right to appropriate treatment is provided for in article 3 of the Law on the Rights of Patients and Compensation for Damage to Their Health. Thus, the State party emphasizes that, with the view to defending his allegedly violated rights to adequate medical care, the author could have applied to the national authorities, including the State Medical Audit Inspection and the courts, and could have appealed in court against the Vilnius University Hospital, which could also be liable to compensate eventual damage.

4.9 The State party notes that on 16 August 2005, a request was submitted to a court for the application of provisional safeguards, namely, the resumption of injections of the experimental drug. On 18 August 2005, given the numerous procedural deficiencies of the request, the court established a new deadline for its submission. The new deadline for the submission did not exclude earlier presentation of the submission. Ignoring the indicated procedural deficiencies that precluded the examination of the request, on 30 August 2005, the author submitted the request to the President of the Vilnius First District Court, requesting the withdrawal of the judge who had handed down the decision of 18 August 2005. That request was dismissed on 1 September 2005 as manifestly ill-founded. On 8 September 2005, given that no appeal without procedural deficiencies had been submitted,

the Vilnius City First District Court decided not to consider the request for provisional safeguards.

4.10 The State party further notes that the author is claiming a violation of his rights under article 10 of the Covenant, stating that he was questioned by the police while in the Penitentiary Hospital. Since the author did not specify the date of the police visit, the State party assumes that he is referring to the visit by an investigator on 6 June 2005 as recorded in the domestic proceedings. It notes that the author was hospitalized from 3 to 13 June 2005 and stresses that his statement that he was in a "pre-heart attack" state is incorrect. At that time, the author's state of health was satisfactory and his hospitalization was planned beforehand; it was not an emergency. The author's medical file contains no record of special or extraordinary visits by medical doctors due to the allegedly worsened state of the author's health or loss of consciousness on 6 June 2005. In addition, according to the results of the medical examination on 7 June 2005, the author's heart was rhythmical and no coronary deficiency was revealed. Accordingly, the author's allegations under article 10 that the visit by the investigating police officer on 6 June 2005 negatively affected his health are unsubstantiated and inadmissible under article 2 of the Optional Protocol. The State party submits that, in any event, the author failed to exhaust domestic remedies in that regard.

4.11 Regarding the author's allegations under article 9, paragraphs 1 and 4, of the Covenant, the State party notes that at the time of submission of its observations, the pretrial investigation had been completed and the criminal case was pending before the first instance court. The criminal case consists of 105 files and 13 suspects, including the author, have been charged for different crimes.

4.12 The State party adds that on 19 May 2005, when deciding the author's custody, the Vilnius Second District Court, concluded that the criminal case file contained sufficient evidence to assume that the suspect had committed the incriminated acts; that the author was suspected of having committed grave and serious crimes and could face imprisonment; and that the foregoing might motivate him to attempt to escape. It was also observed that the investigation was not over and that not all the suspects had been arrested, making it possible for the author to attempt to influence other persons (e.g. witnesses, experts, other suspects, etc.), as well as to hide or falsify significant evidence. The court concluded that the author might obstruct the proceedings. The State party emphasizes that the court took into consideration the author's state of health and concluded that there were no grounds to assume that, while in detention, he would not be provided adequate medical care.

4.13 The State party notes that on 16 August 2005, the Vilnius Second District Court endorsed the prosecutor's request to prolong the author's custody by three months. On 9 September 2005, the Vilnius Regional Court, on appeal, quashed the lower court's decision and the author was released on that day.

4.14 The State party notes, with reference to the jurisprudence of the Human Rights Committee, that in instances where the allegations are, in their essence, related to the assessment of facts, evidence and issues of domestic law by domestic courts, it is generally up to the courts of the State party, and not the Committee, to evaluate the facts in a particular case and to interpret domestic legislation, provided that the evaluation of the facts and their interpretation of the law are not manifestly arbitrary or do not amount to a denial of justice. In the present case, the issues of "sufficiency" of evidence, the existence of the grounds for the imposition of the detention on remand, as well as the circumstances that should be taken into account when deciding the particular type of remand measure have been addressed. Thus, the author's claims under article 9, paragraphs 1 and 4, of the Covenant are unsubstantiated and inadmissible.

4.15 Regarding the author's claims under article 14, paragraph 3 (b), (d) and (g), the State party notes that this provision of the Covenant contains a set of minimum guarantees for the accused in criminal cases. The State party notes that three lawyers represented the author in the domestic proceedings. The various State institutions, including the investigation and the pretrial prosecutors, were overloaded with repeated complaints by the author. For instance, on 26 May 2006 the pretrial prosecutor, responding to the author's submission of 22 May 2006, indicated that his requests had already been examined and partly satisfied. The pretrial prosecutor drew the author's attention to the over 100 complaints had already been received from him, and that the entirety of the complaints and their repetitiveness was tantamount to abuse of the right of submission. On 1 September 2006, the Deputy Prosecutor General also notified the author and his lawyers that over 150 complaints had already been received and examined, and some of them had been satisfied.

4.16 Regarding the visit by a police officer on 6 June 2005, the State party reiterates the facts concerning the nature of the author's placement in the Penitentiary Hospital and his subsequent treatment. It further notes that the author had complained about the visit to the General Prosecutor on 6 June 2005. On 13 June 2005, the said submission was referred to the pretrial prosecutor for consideration.

4.17 The State party points out that, according to the police officer's official record, the visit of 6 June 2005 was initiated by the author and a lawyer. In particular, they had expressed the willingness to meet to provide information, off the record, concerning other members of the organized criminal group. When the police officer arrived, the author's counsel was not present, and as the author did not wish to communicate, the officer left. In that regard, the State party submits that the initiative taken by the author's lawyer to contact the police officer could be supported by the "off the record" meeting that took place on 7 June 2005, as documented in the author's medical records. According to the record of 7 June 2005, a doctor was called to the ward at 1 p.m. because the author had complained about pain in his chest. The author explained that he had been working with his lawyer and the investigation officer but had become tired. On 8 June 2005, the medical records indicated that the author was feeling well and had no complaints. The results of the medical examinations performed thereafter did not show any coronary deficiency or any other health-related problems. The State party stresses that the author was never questioned within the framework of the pretrial investigation during his hospitalization between 3 and 13 June 2005.

4.18 Finally, the State party strongly denies all of the author's allegations concerning attempts to coerce him into confessing guilt. In particular, it notes that the author never acknowledged any of the charges laid against him and still continues to deny them.

4.19 The State party concludes that, insofar as the police officer's visit did not constitute interrogation and did not create any legal consequence to the author, the author's allegations in that regard fall outside the scope of article 14, paragraph 3 (d) and (g), of the Covenant, and that part of the communication is inadmissible under article 3 of the Optional Protocol. Alternatively, it is unsubstantiated and thus inadmissible under article 2 of the Optional Protocol. That part of the communication is also inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, as the author had complained to the Office of the Prosecutor General, inter alia, about the circumstances in which he was questioned on 6 June 2005, and his complaint had been dismissed. However, the author never appealed that decision in court, as permitted under article 63 of the Code of Criminal Procedure.

4.20 Regarding the official notification that he was a suspect on 18 March 2008, the State party submits that on 5 March 2008, the author and his three lawyers were informed that he was being summoned for questioning on 13 March 2008. At the author's request, the interrogation was rescheduled to 14 March 2008. However, the author did not show up at the set time; it transpired that he was being treated in the urology unit of Klaipeda Hospital

since 13 March 2008 and he had undergone an operation. On 15 March 2008, the Head of the urology unit of Klaipeda Hospital was questioned by the police and he explained that the author was suffering from urethral stenosis. However, the doctor confirmed that the operation was not an emergency.

4.21 The medical doctor who treated the author at the time explained to the police that the author's condition was satisfactory, that he was able to read and write, and that he was conscious and oriented. The doctor did not object to the author being notified in hospital on 18 March 2008 that he was a suspect in a crime.

4.22 On 15 March 2008, the author's lawyers were informed that due to the author's inability to travel to Vilnius in the light of his health condition, he would be notified in hospital at 10 a.m. on 18 March 2008 that he was a suspect. That was done on 18 March 2008 in the presence of his lawyer and, on that occasion, an official record regarding the author's refusal to be questioned was made because the author claimed that, due to his state of health, he was unable to testify as he did not understand the charges against him; in the meantime, he categorically denied having committed any crime. Also, it was noted that the record was read by the author's lawyer who confirmed its accuracy. When contacted on 20 March 2008, the attending physician explained that the author had already been discharged from hospital and that no negative implications had occurred as a consequence of the notification that he was a suspect.

4.23 Since the author and his lawyers were informed in writing on 5, 7 and 15 March 2008 that the official notification that the author was a suspect was going to be carried out, the State party submits that the author was informed sufficiently in advance for the purposes of article 14, paragraph 3 (b), of the Covenant[2]. He was discharged from hospital on 20 March 2008, and was not hindered in any way in the enjoyment of his right to defence.

4.24 Consequently, the author's complaints under article 14, paragraph 3 (b) and (g), of the Covenant are unsubstantiated and inadmissible under article 2 of the Optional Protocol, and for non-exhaustion of domestic remedies, under article 5, paragraph 2 (b), of the Optional Protocol.

4.25 On 18 February 2010, the State party submitted its observations on the merits of the communication. Regarding the discontinuation of the author's participation in the clinical trial, the State party reiterates its previous observations and submits that no violation of the author's rights under articles 7 and 10 of the Covenant has occurred.

4.26 As regards the claim of the effects to his health due to his questioning in the hospital in June 2005, the State party reiterates, with reference to its previous submission, that the author's rights under article 10, paragraph 1, of the Covenant were not violated.

4.27 Regarding the author's allegations under article 9 of the Covenant, the State party reiterates its previous arguments, and stresses that the requirements prescribed by this provision were observed in this case, and that considerable attention was paid to the author's health status when deciding the restraint measure. It notes that, in general, people diagnosed with hepatitis C lead a normal life, if provided adequate care. Nevertheless, by nature, the disease does not preclude the possibility of detention and this, in particular, was not claimed by the author at the national level. Moreover, even after the author's participation was discontinued, an alternative treatment was prescribed to him.

4.28 As concerns the author's claims regarding the police officer's visit on 6 June 2005, the State party reiterates its previous arguments, noting that it has difficulties assessing the

[2] The State party refers to *a contrario Aston Little v. Jamaica*, communication No. 283/88, § 8.3.

circumstances of the claim, as it was not evaluated at the domestic level. Moreover, nothing demonstrates that the author was forced to testify against himself, as he had never admitted guilt regarding any of the charges laid against him. Consequently, his rights under article 14, paragraph 3 (d) and (g), of the Covenant were not violated.

4.29 On the allegedly unlawful notification on 18 March 2008 that the author was a suspect, the State party reiterates its previous submissions and maintains that the author's rights under article 14, paragraph 3 (b) and (g), of the Covenant were not violated.

**Author's comments on the State party's observations**

5.1 On 5 February 2010, the author reiterated that the Vilnius Second District Court, when deciding his restraint measure on 19 May 2005, knew that termination of his participation in the experimental treatment would have adverse consequences to his health.

5.2 He adds that he was not taken three times a week to the medical institution that was conducting the research, but to the medical unit of Lukiske Pretrial Detention Centre, where he received the medication. Once a month, he underwent examinations at the research institution.

5.3 The author submits that he, his lawyers and his wife had exhausted all available domestic remedies as required by article 5, paragraph 2 (b), of the Optional Protocol to the International Covenant on Civil and Political Rights.

5.4 As to the claims under article 9 of the Covenant, he highlights the recommendations of 5 July 2007 of the Medical Panel of the Centre for Hepatology, Gastroenterology and Dietetics of Vilnius University Santariskes Hospital concerning the positive effects of the treatment with the experimental drug.

5.5 Concerning his interrogation in the absence of a lawyer, he submits that he was interrogated on 5 and 6 June 2005. He had filed a complaint about that with the Prosecutor's Office. From 3 to 13 June 2005, he was treated in the Penitentiary Hospital for, inter alia, hypertonia, nervous breakdown, insomnia, chronic viral hepatitis C, coronary disease. From 3 to 7 June 2005, he states that was not examined by doctors, because the cardiologist was absent.

5.6 Regarding the notification that he was a suspect on 18 March 2008, he emphasizes the breach of article 188 of the Code of Criminal Procedure (regulating interrogation of sick suspects). In addition, a medical doctor at Vilnius Psychoneurological Centre recommend that no investigative actions be conducted with him at the material time, due to his health condition.

5.7 He further submits that the fact that he never admitted his guilt does not contradict his claim under article 14, paragraph 3 (g), as his arrest and unlawful interrogations while hospitalized and in the absence of a lawyer were aimed at forcing him to confess guilt for crimes he never committed.

5.8 On 15 March 2010, he reiterated his claims and added, in particular, that in violation of article 14, paragraph 3 (b), of the Covenant, he did not have enough time and opportunity to prepare his defence, as he was denied the right to get acquainted with the content of the criminal case during the pretrial investigation (e.g., related to questioning of several witnesses, the decision to perform a psychiatric examination, documents relating to witnesses being granted anonymity), or to adduce materials either during the pretrial investigation or during the trial.

5.9 On 24 August 2005, his lawyer asked the prosecutor to allow him to acquainted himself with author's criminal case file; the request was rejected on 25 August 2005. The lawyer appealed the refusal, but on 16 September 2005, the Vilnius Second District Court

quashed it, stating that only in exceptional situations, a suspect and his defence lawyer may be refused permission to become acquainted with case file materials. On 6 October 2005, the prosecutor permitted the lawyer to acquaint himself with case materials not related to the information-gathering process. On 10 October 2005, the author's lawyer appealed that decision; however, the court dismissed the appeal on 12 October 2005, stating that pretrial operational work was still ongoing and details could not be disclosed. The author was permitted to acquaint himself with the case file materials as allowed on 3 November 2005. He notes that the requests to become acquainted with particular materials of the pretrial investigation were rejected by the Prosecutor's Office and the courts on 6 December 2005, 25 January 2006, 10 and 14 July 2006, 11 and 23 August 2006, 7 September 2006, 6 October 2006, 16 October 2006, 20 October 2006, 25 October 2006, 27 November 2006, 9 January 2007, 22 and 23 January 2007, 5 and 19 March 2007, 7 June 2007. On nine occasions the courts ordered the Prosecutor's Office to review its refusals to give access to different materials, all of which were ignored.

5.10 On 31 March 2008, the author was informed that the pretrial investigation was finished and that he could acquaint himself with all the case materials. On 15 May 2008, he informed the prosecutor that the prohibition to leave Palanga had been imposed on him since 13 September 2005 and therefore he could not go to Vilnius to familiarize himself with the materials. On the same day, he was informed by the Fourth Organized Crime Investigation Service of the Criminal Police Bureau that copies of the pretrial investigation materials would be ready for his attention by 23 May 2008. On 22 May 2008, the author requested the prosecutor to allow him to travel to Vilnius to consult the case file, as at that time, he was receiving treatment in a hospital and the request to send the criminal case file materials to his defence lawyers had been denied.

5.11 The author further submits that, after the completion of the pretrial investigation, his and/or his defence lawyers' requests to adduce additional documents were not examined in a timely manner. Consequently, the author alleges that he was "deprived of the right" to appeal the pretrial prosecutor's decision to a higher prosecutor and, therefore, was unable to present his defence evidence by 15 December 2008, when the court trial started. The author also notes that on 15 December 2008, the court dismissed his requests regarding defence evidence. He adds that during the adjudication of the criminal case, neither he nor his lawyers were able to become acquainted with the evidence which had been removed from the file, whereas some of his defence evidence was disregarded.

5.12 Furthermore, the author claims a violation of article 14, paragraph 3 (b), of the Covenant, stating that he was hindered in communicating with his defence lawyers while in custody from 19 May to 9 September 2005. He was not precluded from communicating with his lawyers who were working on his case in Vilnius, but he had to obtain separate permission for that from a prosecutor. On 1 and 5 December 2005, he requested the prosecutor to, inter alia, allow him to meet with his lawyers in Vilnius without specific permission, but on 3 January 2006, his requests were dismissed. On a number of other occasions, he requested the prosecutor to alter his prohibition to leave Palanga, but without success. On 24 April 2009, the Vilnius Regional Court decided to, inter alia, alter his prohibition to leave Palanga without prior written permission.

5.13 By letter of 23 June 2010, the author reiterated his previous claims and added that his custody had been unnecessary and that due to his detention, he had lost 65 per cent of his working capacity and was suffering deep depression. As to the State party's argument that he could have complained about the allegedly inadequate medical care, he notes that the essence of his claim was his participation in clinical research while in detention. The unlawful participation was terminated on 16 August 2005; however, the State institutions did nothing to ensure his participation in the research (i.e. by altering his restraint measure).

5.14 The author also reiterates that he was interrogated in hospital in the absence of a lawyer, despite his poor state of health, on 5 and 6 June 2005, to make him confess guilt. On 6 June 2005, he complained to the Prosecutor General about the interrogations. He states that the State party incorrectly determined the date of the interrogations. He further contests the State party's contention about his state of health between 3 and 13 June 2005.

5.15 As to the violations of article 9, paragraphs 1 and 4, of the Covenant, the author refers to the decision of 9 September 2005 of Vilnius Regional Court, wherein the court held that custody had been applied on him "unreasonably".

5.16 Regarding the notification that he was a suspect on 18 March 2008, the author points out that the officials ignored his doctor's recommendation that investigative actions not be conducted with him, and that they could have waited until 20 March 2008, when he was discharged. He also submits that he has exhausted all available domestic remedies in the context of the present claim.

5.17 The author further reiterates that his arrest and unlawful interrogations in the hospital in the absence of a lawyer were means to obtain his confession to crimes he never committed. He contends that he has exhausted all available domestic remedies, as his request to postpone all the interrogations until his recovery and his complaint about the inappropriate interrogation were not duly examined.

5.18 The author reiterates that his and his lawyers' requests to, inter alia, become acquainted with and/or adduce certain documents in the criminal case file were not duly and in a timely manner examined by the prosecutor. In particular, he said that he appealed the pretrial prosecutor's decision of 22 August 2008 to a higher prosecutor to satisfy only partly his request to add a number of documents to the case file and his appeal was dismissed on 8 September 2008, the reason being that the pretrial investigation had been completed. Although, under article 64 of the Code of Criminal Procedure (CCP), a prosecutor's decision during the pretrial investigation could be appealed during the pretrial investigation period. Consequently, he was "deprived of the right" to appeal the pretrial prosecutor's decision to a higher prosecutor.

5.19 In conclusion, the author maintains that the present communication fulfils the requirements of articles 2; 3 and 5, paragraph 2 (b), of the Optional Protocol to the International Covenant on Civil and Political Rights.

**State party's additional observations**

6.1 On 2 July 2010, the State party noted, with regard to the author's claims under article 14, paragraph 3 (b), that they concerned exclusively the period of the pretrial investigation. In that context, the author alleged that it was impossible for him to become acquainted with the materials in the case file before the questioning of one of the witnesses; to familiarize himself with the psychiatric examination records and with the evidence provided by the witnesses to whom anonymity was applied. He also alleged that he was denied the right to appeal the decision of a prosecutor in his request to supplement the documents for the pretrial investigation after it had been completed and that he was denied the right to communicate with his lawyers without interference.

6.2 The State party notes that the author's criminal case has been referred to the court of first instance, namely, Vilnius Regional Court, for examination. Therefore, the issues invoked in the author's additional claims at the material time could still be raised and addressed in court, as well as later within appeal and cassation proceedings.

6.3 The State party adds that after a case is transferred to court for adjudication, the court is not precluded from collecting additional data (CCP, article 287). Under article 98 of the CCP, everyone is entitled to submit relevant information to a court. Under article 20

of the CCP, data collected and recorded in the course of a pretrial investigation may be considered as evidence only by a court decision. The court examines the data collected, verifies that it was collected lawfully and assesses its relevance to the case. Data transforms into evidence solely upon examination by the court. Parties in the proceedings may object to data submitted to or collected by a court (e.g. a request may be made that the court not consider certain facts or materials as evidence). The issue as to whether the author's rights have been violated or whether claims are substantiated can only be established in the light of the entire criminal proceedings. Consequently, the State party submits that the author's claims about the violation of his right to access the materials of the pretrial investigation, as well as about the restricted rights to defence are premature.

6.4 The State party notes that the right to have adequate time and facilities to prepare for his defence, including the right to access case materials, should be differentiated at the various stages of criminal proceedings. Regarding the pretrial investigation stage, it points out that the criminal procedure legislation does not prescribe an absolute right to familiarize oneself with case file materials during the pretrial investigation. Article 181, paragraph 1, of the CCP states that a prosecutor may not grant the right to the suspect or the defence lawyer to familiarize himself with all or part of the materials of the pretrial investigation if such familiarization could undermine the conduct of the pretrial investigation. Such refusals may be appealed to the pretrial judge, whose decision is final.

6.5 Under article 177, paragraph 1, of the CCP, information about a pretrial investigation shall not be disclosed or may be disclosed at the discretion of the prosecutor and only to the extent deemed permissible by the prosecutor. During the pretrial investigation, the author was permitted to familiarize himself with certain parts of the case materials, which, at the material time, did not concern materials related to ongoing investigative actions. Moreover, the author was allowed to acquaint himself with the whole case file when the pretrial investigation was completed.

6.6 The State party further rejects the author's statement that the prosecutor ignored the decisions of the pretrial judges. It notes that, on numerous occasions, the pretrial judges confirmed that the prosecutor's decisions were justified (e.g. the decisions of 12 October 2005, 14 July 2006, 1 January 2007, 22 January 2007 and 19 March 2007) and in cases where the author's appeals were satisfied by a court, the prosecutor duly observed the decisions of the pretrial judges.

6.7 The State party further notes that the author misleadingly contends that the decision of the pretrial judge of 16 September 2005 was not executed by the prosecutor. The pretrial judge ordered the prosecutor to re-examine the author's request to acquaint himself with the materials of the pretrial investigation and to indicate the documents to which access was restricted and provide the reasons. By the decision of 6 October 2005, the prosecutor indicated that the author's lawyer was refused access to familiarize himself with the materials of the pretrial investigation that concerned the ongoing gathering of information. The prosecutor also noted that the investigation involved acts constituting elements of serious and grave crimes and that fact-finding and operative measures were ongoing. He also indicated that there was sufficient information showing that the suspect was exerting unlawful pressure on the pretrial investigation by making use of information obtained. He further stated that the author had published in the main daily newspaper several "open letters", in which he disclosed the essence of evidence against him that was given by a witness in an attempt to create a negative image of the witness. Such actions constituted an unlawful pressure on the pretrial investigation. Moreover, the author had listed the surnames of other persons involved in the ongoing pretrial investigation. The State party adds that although the author was permitted to examine some of the materials in the case file, he nevertheless appealed that decision. On 12 October 2005, a pretrial judge of Vilnius Second District Court dismissed the appeal, and confirmed the reasonableness of

the prosecutor's decision. On 3 November 2005, the author's defence lawyer was allowed to acquaint himself with the part of the file to which access was permitted.

6.8 As to the author's claim concerning his inability to become acquainted with documents related to the questioning of a witness, the State party notes that the pretrial judge examining the lawyer's appeal in that regard on 14 July 2006, and found the prosecutor's decision to refuse access to certain materials before the questioning justified. The State party emphasizes that the author and his lawyers were informed about the questioning of the witness and could have participated therein. Moreover, the author and his defence lawyer could raise the issues related to the present claim, including the questionings, during the ongoing court trial.

6.9 As concerns the author's request to acquaint himself with the prosecutor's decision to perform a psychiatric examination on two other suspects, as well as with the consecutive records, the State party notes that on 6 October 2006, the prosecutor partly satisfied that request and allowed the author to acquaint himself with the content of the questions to the experts. On 25 October 2006, a pretrial judge quashed the prosecutor's decision and indicated that, in line with article 209 of the CCP, the prosecutor should inform a suspect beforehand of the necessity to perform such an examination. However, since the prosecutor had adopted the order of the examination on 13 May 2005, i.e., before the author was considered a suspect, he was not informed of the said decision. Therefore, the pretrial judge ruled that the author should be permitted to access the content of the examination records. Moreover, the author and/or his defence lawyers could still raise those issues during the court trial.

6.10 The State party further notes that the author incorrectly submits that, on 19 March 2005, a pretrial judge had ordered the prosecutor to grant leave for him and his lawyers to familiarize themselves with the entire case file, and that that order was ignored. It points out that, in fact, the pretrial judge's decision had confirmed the prosecutor's decision as lawful and has dismissed the appeal. However, in the decision of 21 June 2007 of Vilnius Second District Court, the pretrial judge quashed the prosecutor's decision and stated that the prosecutor should allow the author and his lawyer to acquaint themselves with materials in the case file whose disclosure would not impede the pretrial investigation. On 13 July 2007, the prosecutor satisfied the author's request and provided extensive motivation for partially restricting access to some of the case materials, as, in addition to the above-mentioned unlawful disclosure of information of the pretrial investigation on the part of the author, other unlawful actions hindering the investigation had occurred. In particular, the prosecutor noted that shortly after the questioning of a witness at the request of the author, a publication appeared in the main daily newspaper, in which the essence of the witness' testimony was revealed. Furthermore, in the course of the investigation, two broadcasts were aired on television about other ongoing activities of the investigation. In his decision of 31 August 2007, the prosecutor listed all the documents with which the author and his lawyers were permitted to familiarize themselves.

6.11 Finally, the State party reiterates that the author and his lawyers were informed about their right to familiarize themselves with the materials of the case file at the end of the pretrial investigation. Indeed, the author was able to familiarize himself with the materials of the pretrial investigation after it had been completed, and had approximately half of year to prepare his defence.

6.12 Regarding the author's alleged impossibility to adduce additional evidence during the pretrial investigation, the State party notes that under article 218, paragraph 4, of the CCP, a prosecutor adopts the decisions in that regard. On 22 August 2008, the prosecutor rejected the author's request to supplement the case file. Since the case file was transmitted to Vilnius Regional Court on 2 September 2008, the author's appeal against the prosecutor's decision of 22 August 2008, together with the request to supplement materials,

was transferred to the court of first instance. Contrary to the author's statement that, on 15 December 2008, the court had dismissed all his and his lawyer's requests without examination, the State party points out that the court indicated that, at that stage of the proceedings, the request had to be dismissed as it could not consider requests to supplement the case file before it had examined the materials already on file. This statement, according to the State party, should not be considered as a definitive rejection of the request, but rather as a postponement of addressing it.

6.13 Regarding access to materials regarding witnesses who were granted anonymity, the State party submits that, although after the completion of the pretrial investigation, suspects and lawyers are entitled to acquaint themselves with the case file, and the author had exercised that right, it does not affect the institution of witness anonymity in criminal proceedings. In particular, in his decision of 17 March 2008, the prosecutor indicated that certain witnesses had been questioned in an ordinary way, but later requested anonymity due to fears about retaliation by the author. As such, the records of their testimonies were removed from the file. Given that this issue was also raised during the hearing of 15 December 2008, the court of first instance explained to the author and his defence that they would be able to question the witnesses to whom anonymity was applied at a later stage. Similarly, the court stated that the author's request to additionally question certain witnesses would be dealt with at a later stage of the examination of the case.

6.14 In the light of the above, the State party maintains that the author's claims regarding his ability to familiarize himself with the materials and his right to defence are unsubstantiated. In any event, the author's right to access materials in the case file and his right to defence were not restricted in a manner incompatible with article 14, paragraph 3 (b), of the Covenant.

6.15 On the author's claims about inability to communicate with his lawyers without interference, the State party notes that according to the information on file, he sought the alteration of the prohibition to leave Palanga, because his defence lawyers were based in Vilnius. Article 14, paragraph 3 (b), of the Covenant establishes the right to have adequate time and facilities to communicate with counsel of one's own choosing. The State party asserts that nothing prevented the author from choosing a lawyer practicing in Palanga, especially given the restraint measure. However, he chose lawyers practicing elsewhere. Nevertheless, the State party notes that the author's visits to Vilnius to meet his lawyers, not to mention other possible forms of communication, were not hindered. Quite to the contrary, the author's requests to the prosecutor, who, in accordance with article 136, paragraph 1, of the CCP, had the power to grant permission to leave the place of residence, were settled in an informal and prompt manner by fax. On several occasions, when examining the author's appeals against the prosecutor's decisions refusing to change the conditions of the imposed prohibition to leave Palanga, Vilnius Second District Court stated that the author was not prevented from going to Vilnius in order to visit doctors or lawyers. Moreover, the State party notes that the author had never submitted any complaints about hindrance or preclusion with regard to meeting with his defence lawyers. Therefore, the State party submits that that claim is unsubstantiated.

6.16 In light of above, the State party maintains that the complaints additionally submitted by the author on 15 March 2010, are premature or unsubstantiated and therefore thus inadmissible. The State party maintains that, in any event, the author's rights were not violated.

**Author's comments on the State party's additional observations**

7.1 On 11 September 2010, the author pointed out that the court had postponed the adjudication of his criminal case on 15 December 2008. Thereafter, his lawyer requested the court to question several witnesses; however, that request was dismissed on grounds

that, at that stage of the criminal proceedings, that constituted new evidence, and new evidence could not be examined before evidence already gathered had been examined. The decision as to whether to alter the prohibition to leave Palanga was also postponed.

7.2 The author further explains in detail the alleged breaches of national law by the Vilnius Regional Court and the prosecution concerning the unjustified anonymity of witnesses.

7.3 With reference to the State party's argument that a prosecutor's decision may be appealed to a pretrial investigation judge, the author reiterates that, on nine occasions, the pretrial investigation judge quashed decisions of the prosecutor and ordered the prosecutor to re-examine his requests to access to case file materials. He gives instances of the prosecutor's non-compliance with the established time limits for examination of his requests, and notes that he could not influence witnesses. He reiterates that he was denied the possibility to participate in the questioning of several witnesses and points out that without being acquainted with the materials, he was unable to prepare for the questioning of witness N.

7.4 The author further states that the prosecutor did not allow him or his defence lawyer to become acquainted with the pretrial investigation materials concerning the questioning of witnesses P and N, which took place on 31 May 2006 and 30 June 2006, nor the questioning of witness B. He provides information on how he had unsuccessfully challenged the refusal decisions in court.

7.5 The author adds that on 29 May 2006, the prosecutor rejected his request to be questioned, as he felt that the questioning by the pretrial investigation officer lacked objectivity. That refusal was upheld by a court on 21 June 2006. Accordingly, the author submits that he was precluded from giving evidence; therefore, his rights guaranteed under article 2, paragraph 3, of the International Covenant on Civil and Political Rights have been violated.

7.6 As to the State party's statement that he was able to become acquainted with all the materials of the pretrial investigation after its completion in March 2008, he notes that he became acquaint with the materials on 26 May 2008. However, he still could not access "hidden rulings, prosecutor's letters, separate assignments".

7.7 He further notes that the prosecutor's decision of 22 August 2008, refusing permission to adduce evidence, was appealed on 2 September 2008 to a higher prosecutor. The appeal was referred for examination to Vilnius Regional Court and on 15 December 2008, the regional court refused to examine his request.

7.8 Regarding the State party's argument that he could have opted for a lawyer in Palanga, the author points out that the national law provides for, inter alia, unhindered communication with the defence lawyer of one's choice and that the prohibition to leave Palanga served in fact as a punishment and a hindrance to his enjoyment of his right to defence.

**Issues and proceedings before the Committee**

*Consideration of admissibility*

8.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the case is admissible under the Optional Protocol to the Covenant.

8.2 As required under article 5, paragraph 2 (a), of the Optional Protocol, the Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 The Committee notes the author's claims under articles 7 and 10 of the International Covenant on Civil and Political Rights that the termination of his participation in the experimental clinical trial on 16 August 2005 negatively affected his state of health. In that connection, the Committee notes that the right to participate or not in experimental clinical tests organized by a private entity with the aim of testing a particular drug and which has been entered into at one's free will prior to one's detention, as in the circumstances of the present case, does not fall within the scope of the Covenant. Consequently, the Committee concludes that those claims are incompatible with the provisions of the Covenant and, therefore, that part of the communication is inadmissible under article 3 of the Optional Protocol to the Covenant.

8.4 The Committee notes the author's claim under article 10 of the Covenant concerning his interrogation on 5 and 6 June 2005 while hospitalized, and which allegedly resulted in the deterioration of his health. In the light of the information on file, the Committee considers that claim inadmissible under article 2 of the Optional Protocol, as it is insufficiently substantiated.

8.5 Similarly, regarding the author's claims under article 9 of the Covenant concerning his allegedly unlawful placement in custody from 19 May to 9 September 2005, taking into account all pertinent information on file, the Committee considers that those claims are not sufficiently substantiated for purposes of admissibility, and are therefore inadmissible under article 2 of the Optional Protocol.

8.6 Furthermore, the author claims violations of his rights under article 14, paragraph 3 (d) and (g), of the Covenant, as on 5 and 6 June 2005, he was interrogated while in hospital and in the absence of a lawyer, and his helpless state in hospital was used by the investigation officer in an attempt to force him to confess guilt. In that connection, the Committee notes that, given the available information on file and taking into account that the author never actually confessed guilt, those claims are also insufficiently substantiated for purposes of admissibility. Accordingly, the Committee concludes that that part of the communication is inadmissible under article 2 of the Optional Protocol.

8.7 The Committee further notes the author's claims under article 14, paragraph 3 (b) and (g), of the Covenant that on 18 March 2008, while he was hospitalized and contrary to his medical doctor's prohibition to conduct investigative actions, he was notified that he was a suspect and, despite his poor state of health, was questioned by investigators. In that regard and in the light of the information on file, the Committee considers that the author has failed to sufficiently substantiate those claims and, therefore, that part of the communication is inadmissible under article 2 of the Optional Protocol.

8.8 Regarding the author's additional claims under article 14, paragraph 3 (b) and (e), of the Covenant that he did not have sufficient time and opportunity to prepare his defence since he was denied the opportunity to acquaint himself with the materials of the pretrial investigation and to supplement them, as well as to freely communicate with his lawyer, the Committee notes, first of all, that according to the information provided by the parties, during the pretrial investigation, the author was precluded from acquainting himself with specific parts of the materials in the case file. However, in the light of the information on file, the refusals to grant him access to part of the materials were motivated and on a number of occasions, reviewed by national courts and while some were upheld or modified with more specific grounds for refusal, others were overruled and permission was granted. In those circumstances, the Committee is unable to conclude that the refusals in question were arbitrary. Furthermore, the Committee notes that the issue of supplementing the materials of the pretrial investigation (at the court trial stage) relates to the manner in which the national authorities evaluated evidence and determined what evidence specifically was relevant in the framework of the court trial. The Committee observes that those allegations relate primarily to the evaluation of elements of facts and evidence by the national authorities.

8.9 The Committee further notes the author's claim regarding the alleged impossibility to communicate freely with his lawyers, but it also notes that the information on file does not contain further details thereon, such as, for example, the exact context in which his contacts with his lawyers were obstructed.

8.10 The Committee recalls that it is generally up to the courts of States parties to evaluate the facts and evidence in a particular case, and that it is not up to the Committee to review the evaluation, unless it can be ascertained that the court's evaluation was clearly arbitrary or amounted to denial of justice, or that the court had violated its obligation of independence and impartiality.[3] Given the fact that adjudication before the court of first instance was still ongoing at the time the present claims were submitted and in the light of the information received, the Committee considers that in this case, the author has failed to demonstrate that the refusal to supplement the materials of the pretrial investigation or the postponement of the decision in that respect by the court had reached the threshold of arbitrariness in the evaluation of the evidence or that it amounted to denial of justice.

8.11 In those circumstances, the Committee considers that the author has failed to sufficiently substantiate his allegations under article 14, paragraph 3 (b) and (e), of the Covenant, and therefore that part of the communication is inadmissible under article 2 of the Optional Protocol.

8.12 Finally, the Committee notes that the author also claims a violation of his right to examine particular witnesses, in violation of article 14, paragraph 3 (e), of the Covenant, without however providing further explanations thereon, in particular, on the relevance of the examination of the witnesses to his criminal case. In the circumstances and in the absence of any other pertinent information, the Committee considers that the author has failed to sufficiently substantiate his claim for purposes of admissibility, and accordingly, that part of the communication is inadmissible under article 2 of the Optional Protocol.

9. The Human Rights Committee therefore decides that:

(a) The communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) The present decision shall be transmitted to the State party and the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

---

[3] See, inter alia, communication No. 541/1993, *Simms* v. *Jamaica*, decision of inadmissibility adopted on 3 April 1995, para. 6.2.